Amusements, etc., This Evening.

BOOTH'S THEATER.—"Amy Robsart." Miss Neilson.
GRAND OPERA HOUSE.—At 7½: "Monte Cristo." Chas. Fechter.
NEW FIFTH AVENUE THEATER.—"Madelein Morel."
NIBLO'S GARDEN.—"Azurel; or, The Magic Charm."
OLYMPIC THEATER.—"Humpty Dumpty." Geo. L. Fox.
UNION SQUARE THEATER.—"Without a Heart."
WALLACK'S THEATER.—"Our American Cousin." E. A. Sothern.

CENTRAL PARK GARDEN.—Summer Night's Concert. Theodore Thomas.

Index to Advertisements.

Business Notices.

TERMS OF THE TRIBUNE.

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New-York Daily Tribune.

FOUNDED BY HORACE GREELEY.

TUESDAY, MAY 27, 1873.

President MacMahon has announced his Cabinet. ==== The Alabama award was discussed in the British House of Commons.

The papers in the great Crédit Mobilier suit were filed at Hartford. ==== The Stokes case was argued on appeal at Albany.

The Brooklyn Committee of One Hundred, the Committee of Fifty, and the Common Council, protested against the reimbursements of private stockholders from the East River Bridge. ==== The number of applications for the minor municipal offices is increasing. ==== A yellow fever patient arrived in the harbor. ==== Gold, 118¼, 118¼, 118¾. Thermometer, 70°, 83°, 62½°.

Persons leaving New-York for the Spring and Summer can have THE DAILY TRIBUNE *mailed to them for $1 per month.*

The last legal appeal in behalf of Stokes, the convicted murderer, which we print to-day, is ingenious and able. It would be impertinent to attempt to forecast any possible decision in the case. The arguments will be considered with special reference to the skill with which they are drawn rather than as giving any indication of the character of the final result.

Mr. James Wood was the champion of a bill which was ordered to a third reading in the Senate, yesterday, and which has every appearance of a job. The bill is designed to compel the lease of the Washington Market property to the West Washington Market Association. The measure is one of an ancient and doubtful flavor. If any other cause for suspicion of its goodness were needed, it would be found in the character of its eager supporters.

Capt. Jack and his twenty-five surviving Modoc braves are determined, it is said, to "die game." They declare their readiness to go to the Happy Hunting Grounds of the future life with their rifles in their hands. Capt. Jack, at least, is under an indictment for murder, and naturally prefers death on the battle-field to the gallows which surely waits for him. This fact will make him the nucleus of a continued and desperate resistance. As long as he is alive there will be pursuit and fighting.

Sunday, May 25, may be noted as the date of the first case of sunstroke of the season, and Monday, May 26, furnishes the first reported arrival of yellow fever at quarantine. Last year our hot weather began nearly four weeks earlier, giving promise of the long and almost insupportable heated term which followed. The fact that there is a case of yellow fever in the harbor need cause no special alarm, but it should warn the city authorities to prepare for this and other Summer pestilential diseases.

Attorney-General Barlow has given the Legislature his opinion concerning the legality of the payment of dividends on alleged over-issued stock of the Erie Railway Company. He is, of course, of the opinion that there should be no dividends paid on stock which has been fraudulently issued in lieu of convertible bonds; but he does not see how the tainted stock is to be distinguished from that which is not under suspicion. It was not really necessary to go to the Attorney-General to discover such an evident fact.

It seems that the proposition in the Legislature to shape the Local Option Prohibition bill to suit the Governor's objections does not please some of the Temperance party. A convention of these at Albany expresses approval of the principles of what is known as "the "Ohio law," but strongly condemns the separation of the ale and beer clause from that part of the bill which provides for the prohibition of intoxicating liquors. It is urged that the licensing of beer-shops will be used as a cover for the sale of the beverages which may be prohibited. At first glance it would appear that this line of argument should be addressed to the voters rather than to the Legislature.

The Government of the reaction has already begun in France. The new Cabinet is composed of men who are entirely in sympathy with the coalition that forced President Thiers to resign. Among the members whose names are published this morning only one (Gen. de Cissey) has had any association with the Republicans, and his antecedents show that he was never thoroughly in sympathy with the Republic. These appointments alone rendered superfluous the formal declaration of President MacMahon, that his administration would adhere to a conservative policy. But, when we consider that the real party of disorder in France is the coalition of monarchists, there is something very much like irony in his remark that the country looked to the Assembly for the restoration of order.

An imposing array of defendants is represented in the bill filed against the Union Pacific Railroad corporation and others at Hartford, yesterday. The bill, which partakes of the character of an indictment, is a formidable document and may be summarized as follows: The total liabilities of the Union Pacific Railroad Company, Jan. 1, 1873, for United States bonds issued to the Company, principal and interest, were $33,435,221; this amount is secured by a lien on the property of the corporation; the Company is insolvent; the actual cost of the road was about one-half the amount of stock issued and other outstanding liabilities; stock was largely issued to enrich the managers; many of the contracts were fraudulent, and the nature of some of them has been concealed from the Government. The case is one of great interest and magnitude; but there is not a very cheerful belief in the Government's ultimate success in any proceedings to compel restitution.

PROHIBITION OF SPECIAL LEGISLATION.

The feature of the proposed new Constitution which meets most nearly the requirements of the existing situation, offering the only remedy that has yet been suggested for the serious evils that have grown up around our system of government, is that which prohibits to some extent special legislation. It is out of this that the great peril which thoughtful men foresee as impending over free government has grown. The best and most intelligent minds in all the States agree that the great and alarming growth of corruption, of venality in the Legislatures, and of bribery in all its forms, can only be stopped by such an absolute prohibition of special legislation as shall virtually set up over the doors of every State House in the country and of the Capitol at Washington the sign, "No privileges for sale here." Perhaps it is not possible to prohibit absolutely all legislation of a private, local, or special character; it does not seem practicable now, at least. But it is possible we may grow up to it; certainly we may and ought to make constant efforts in that direction, for that way, from all present appearances, lies safety. It was the specially marked and commendable feature in the Illinois Constitution of 1870 that it made very sweeping and thorough work of prohibiting special legislation, there being in that instrument twenty-three subjects specified upon which local or special laws were forbidden, and a concluding clause which forbade in general terms the enactment of special laws "in all other cases where a general law "can be made applicable." The Illinois Constitution has hardly been in force long enough to determine the effect of the operation of all these prohibitions in detail, but we do not learn that any serious ground of complaint has arisen in the two years and more that have elapsed since its ratification.

In the Constitutional Convention now in session in Pennsylvania, the subject of special legislation has engrossed more time than any other, and the best thought of the ablest men in the State, of whom, fortunately, that body is composed, has been directed to its consideration. The same causes—principally, however, the consolidation of capital and the growth of power in great corporations, which threaten to override the people and rule the State—have operated there, as here, to draw attention to the magnitude of the danger and the necessity for devising some practical means of escape. The Convention is still in session, and the results of their discussion have not yet been digested, but there is no doubt that in Pennsylvania, as in Illinois, the prohibition of special legislation will be the most marked feature of the proposed new Constitution. There is danger, of course, that, in the multitude of propositions made to meet evils that are so apparent and so diversified, too much may be attempted, and the organic act be made a mere collection of statutory specifics, instead of a condensed expression of principles and doctrines. Indeed, in the present state of public sentiment toward great corporations in Pennsylvania, there is more likelihood of attempting too much than of doing too little in that direction.

In the new proposed Constitution now under consideration at Albany the sections relating to this subject are carefully drawn, and without being diffuse or needlessly specific seem to meet the exigencies of the occasion and to offer a reasonable remedy for much of the corruption which has made the Legislature of the State an annually increasing burden and shame. The prohibitions are not of so sweeping a character as those in the Illinois instrument, and the number of subjects upon which special legislation is prohibited is smaller. Indeed, compared with what has been done in Illinois, and what is proposed in Pennsylvania and other States, it is quite conservative in its provisions in this regard. There is no doubt that this feature will be the most popular one in the act should it be submitted to the people, as public sentiment on the subject is far in advance of the Legislature or the Constitutional Commission. The amazing developments as to the extent to which great corporations have corrupted the fountains of legislation in the past twenty years have opened the eyes of the common people to dangers that they see are not mere theoretical abstractions, but real and imminent. It is their demand that something be done to ward these off, and they will vote eagerly for any proposition that has that in view and seems practical.

But though these prohibitory sections are particularly desired by the people, it by no means follows that the politicians who "run" the Legislature favor them. We apprehend rather that, however they may disguise their opposition to the new Constitution by pretending to criticise other features and approving this, their real hostility is to precisely these clauses. Prohibit special legislation by constitutional enactment, and you have taken away the trade of these men. That is what they have lived upon, traded on, thrived on. If there's nothing for them to sell, no special privilege of which they have the disposal by their votes, there's no use in their going to the Assembly at all; no use in corrupting voters, stuffing ballot-boxes, false counting, repeating, perjury, bribery, or any of the outrages and crimes by which they perpetuate themselves in power and make a lazy living out of honest citizens. It ends all that tribe, and ends too their kindred of the lobby. It is the prohibition of special legislation in the new Constitution, we suspect, that makes it specially offensive to the tribe of professional politicians, for it cuts off one of the most fruitful sources of their revenue. We have no idea, however, that they will attack that feature of it. That would not be prudent. Their efforts to defeat it before it goes to the people will be based upon some other ground, but they will certainly oppose it in every stage of its progress, and by every means in their power. Let the people watch them.

RAILROADS IN ASIA.

The bridging of the comparatively narrow tract which separates the civilizations of India and of Europe is to be accomplished perhaps even more rapidly than anybody now suspects. The gradual advances of Russia towards the Punjaub frontier have been watched for many years, and it has been a curious matter of speculation just where the British and Russian lines should finally meet, and how soon the barbarism that now lies between them should be obliterated in the contact of these great and aggressive Powers. But it seems we are not to wait for the slow course of conquest, annexation, armed occupation, or whatever else the Czar may choose to call his absorption of the Tartar territory. M. de Lesseps has formed a project for constructing under Russian auspices a railway across Turkestan, to complete the chain of communication between St. Petersburg and Calcutta. It is understood that M. de Lesseps has received the assent of the imperial government, and there is no reason to doubt that the daring engineer who built the Suez Canal will be able, with the proper official encouragement, to execute this much less difficult and ambitious work.

The locomotive has already penetrated as far as Orenburg on the Ural River, a frontier town of European Russia, 1,490 miles from St. Petersburg. Thence there will be a desert stretch of 1,500 miles to Samarcand, across the Kirghis Steppes, and from Samarcand another stretch of 850 miles through Bokhara to Peshawur, on the borders of British India. At that point the new line would connect with the railways already built or now building, the English having rail communication already from Calcutta and the other chief cities of Hindostan to Lahore, only 270 miles from the frontier. Of course the construction of this great road under Russian protection would be equivalent to the annexation of Turkestan to the empire.

Meanwhile another scheme of still grander proportions has been formed in Persia, where the Shah has granted to Baron Reuter, the famous news-collector, certain exclusive privileges which may result in the entire renovation of the kingdom. Reuter and his associates are to build railways with aid from the State; to construct canals, reservoirs, wells, and water-works; to utilize the forests; to work the mines; and to farm the revenues. They are to begin by contracting a loan of £6,000,000, upon which the Persian Government guarantees the interest. A new light may be thrown upon the Eastern question when the iron horse snorts through Shiraz and Ispahan; but there are obvious reasons why a railroad separated from European civilization on the one hand by the whole extent of Asiatic Turkey, and on the other by the inhospitable Afghan and Belooch territories, should not be especially attractive as an investment. Whether however the door of communication between India and Europe is to be placed in the Punjaub or on the lower Indus, it is evident that the world is pressing impatiently for a solution of the political and commercial problem, and that it is not to be much longer delayed.

BRIDGE LEGISLATION.

The indignant protest of the two Reform Committees of Brooklyn against the passage of the bills pending at Albany which seek to relieve the East River Bridge Ring at the expense of the people of Brooklyn should not be lost upon the Legislature. The first purpose of the present managers of this great enterprise is to avoid any official scrutiny. They have spent four millions of dollars where their estimates called for only half that sum; and they cannot explain where the missing millions have gone. An investigation, conducted during a heated political contest, is more than they can survive, and hence every effort is bent toward escaping an investigation. Such inquiry the people as imperatively demand. The Bridge management will enter as a most important issue in the ensuing Mayoralty contest in Brooklyn, and the truth about its expenditures must be made known. To give them an honest and impartial Committee of Inquiry is all the people of Brooklyn now ask of this Legislature.

The second aim of the Bridge managers is to avoid any further payments of private stock. As long as Messrs. Kingsley and Stranahan and McCue could conduct the enterprise as they chose, and thus pay for their stock out of the profit of contracts with themselves and of enormous percentages paid to one of their number, they were content to invest in the undertaking. Now that they are forced to a comparatively honest administration, they seek to retire their money, but not themselves. The pending bill provides for the return of their money, but virtually leaves them in charge of the work. The Mayor is to appoint the new Directors in case Assemblyman Jacobs's bill passes the Legislature. Now it is well known that Mayor Powell is subject to the dictation of the Ring which created him and on which he depends for reëlection. Indeed, it is asserted that the ten directors are already named, and that Mr. Kingsley has had the naming of them and the supplying them with stock, from his own and his partners' shares, in order to qualify them as directors.

The appeal of the Reform Committees which we publish will be strengthened at Albany by representations of committees of tax-payers who have gone there to protest against this outrage. The Assembly cannot do a wiser thing than to remit to a succeeding Legislature a final decision in this important matter, which involves not merely the present expenditure of several millions of dollars, but in large degree the prosperity of Brooklyn and of New-York.

A CONNECTICUT LOBBY.

The little State of Connecticut has been for several years wrestling with what is known in its local politics as "the Capital question." The State has rejoiced in two capitals—or rather two capitals have rejoiced in the State—from the date of the charter. It is not a convenient arrangement for the people, because it makes the habitat of the State Government almost as uncertain as its legislation; and while the State officers are vibrating between Hartford and New-Haven, people who want to return conscience money to the treasury hesitate about it from uncertainty as to the whereabouts of the Treasurer. Of course there are other disadvantages, but we mention this because it is the only one that seems to have escaped notice. All the disadvantages of the double-headed system were borne very quietly for the most part, with only an occasional futile suggestion of the advisability of a change, till some four or five years ago a representative from the town of Meriden, half way between Hartford and New-Haven, with twice the ambition of "the aspiring youth "that fired the Ephesian dome," undertook to blow up both capitals and start a new one at Meriden. His resolution proposing to locate the capital at Meriden, doing away with both the present ones, was amended, on motion of a Norwich representative, by the substitution of Hartford for Meriden, in which shape it received a majority vote of the Legislature, and went down to the next Assembly for a two-thirds indorsement before submission to the people. This was the beginning of the liveliest local quarrel the State has known for a great many years. In one form and another the Hartford interest has succeeded in getting a majority vote of the Assembly for the proposition for a single capital every year since then, but has failed every time it came to the second stage of the proceedings in getting the necessary two-thirds. The two cities have spent a great many thousand dollars in pushing and opposing the change, and it is believed that quite a number of persons, with and without legal acquirements, have been enabled to live comfortably through the Winter on the proceeds of their labors in behalf of one side or the other during the Spring and Summer.

Very few people enjoyed the controversy so much as the gentlemen who had "influence" with members of the Assembly. Leading politicians in the State, men who went each year before the people on the stump with great asseverations of honesty and sincerity and the purest patriotism, men who impressed their fellow-citizens with their profound earnestness, and who with their faces to the moon howled their devotion to moral ideas through whole campaigns, were in the lobby of the Legislature one year for Hartford at $500, retained the next year for New-Haven at $1,000, and the next year in one or other branch of the Assembly for the Lord knows who and for what price. The tax-payers of the two cities paid each year from $20,000 to $50,000 to a scurvy set of politicians, who were not only encouraged in idleness and vice by the amounts they received, but were given political position and influence and command of partisan machinery which offered them the largest opportunities for perpetual mischief. The ill effect of this great expenditure was beyond calculation. It bred liars, drunkards, vagrants; it gave the pernicious lobby system the sanction of an official indorsement from the largest and most intelligent populations in the State; it poisoned the sources of legislation, and it engendered a bitterness of rivalry between the two cities that years cannot allay. Stories were rife of members being bribed on one side and the other by cash in hand, by valuable gifts, and by that most common of corrupt considerations in legislative bodies, trading of votes upon pending questions or official appointments. The amounts distributed to the lobby were so large that in both cities the votes making the appropriations for that purpose were passed in secret session and the bills subsequently audited privately, so that the public was kept in ignorance of the extent to which the business was carried on. A lot of greedy lobbyists from all parts of the State—some of them scheming political managers who earned their dirty wages by packing caucuses and conventions, some fourth-rate lawyers, gamblers, and pot-house people, and some members and ex-members of Congress and State officers—kept the business going and fed fat the local quarrel out of which they were making a comfortable subsistence.

So fostered and fed, the quarrel grew, and it was not strange that last April it entered into the State election and affected very sensibly the popular vote. The New-Haven Republicans made a business of trading off votes for Ingersoll, Democrat, for Governor in exchange for votes for Kellogg, Republican, for Congress. The consequence was the defeat of Haven, the Republican candidate for Governor, and English, the Democratic candidate for Congress. After the election was over and the New-Haveners had rejoiced sufficiently over their victory, it occurred to them to foot up the proceeds. They found they had a New-Haven Governor who was powerless on pending the Constitutional Amendment, not having even a chance at it with a veto, and that in electing him they had offended all of Haven's friends, who would certainly oppose them. They had defeated English and set all his friends outside of New-Haven in array against them. They had elected a presiding officer of the State Senate who was a Hartford man, and they remarked also as a singular fact that in one or two Democratic districts a Capital Republican was elected, while Capital Democrats had slipped in from one or two Republican districts. It was another coincidence that several members of the Hartford lobby of previous years were this year members of the Senate or House. Over this state of things the Hartford people smiled and looked cheerful irrespective of party, while the New-Haven people, also irrespective of party, wondered at the startling coincidences.

They wondered still more the other day when the Senate called up the Capital amendment and put it through by 16 to 5, or two more than the necessary two-thirds. The Mayor of New-Haven summoned his councils together forthwith, and, with what the local journals describe as "deep feeling," made known the situation. New-Haven, he said, had been a capital 240 years, and he could n't bear the thought that she was to be deprived of her ancient honors. The Aldermen were affected to tears. One of them moved an appropriation of $10,000 to be expended in opposing the amendment. Not that he wanted to bribe any one—he and all the rest expressly disclaimed that—but, as was frequently remarked during the debate, "money was necessary." The Aldermen voted it. It came to the Council. A late candidate for the Republican nomination for Governor had the presence of mind to suggest that it be considered in secret session. And then the Common Council rose up like Joseph and said, "Cause "every man to go out from me." They went out—the indiscriminate public, the reporters, clerks—everybody but the Common Council. What they did then has not been published. The Hartford papers say they voted the appropriation, and that $10,000 cannot be spent in the case without corruption and bribery. The members of the Legislature at last accounts were watching the New-Haven trains and waiting for the bribery to begin. The vote is to be taken on Wednesday. The $10,000 is to be used for that time. There is no committee hearing, no occasion for the services of legal counsel, no case in which any respectable attorney would take a fee. It is an interesting question how the City of New-Haven proposes to use this sum of money, for that it is to be used there seems to be no doubt. The proposition they desire to defeat is simply to refer the Capital question to the people of the State. If they defeat it, New-Haven will contrive to have the Legislature in session in that city two or three months once in two years. Is it quite worth while to spend so much money in such foolish and probably criminal ways for so little satisfaction?

JUDICIAL TOMFOOLERY.

Those who love leniency, and who do not think it a matter of much consequence if the United States mails are robbed, will read with approval the story of Samuel Williams, son and late clerk of Postmaster Williams of Sharon, Penn. Last week he was convicted of opening letters. The evidence against him was sufficient to satisfy the jury. One fact was that during his absence from Sharon, last Summer, no complaints of letter robbery were made. A report of the case says: "The chain "of evidence proved too strong for him, and, "though provided with the ablest counsel, the "jury pronounced him guilty." He bid his friends farewell with many tears and prepared himself to receive sentence. At this stage of the case a sudden light dawned upon the mind of the District-Attorney, who, upon "a calm and "dispassionate examination of the whole case, "doubted the defendant's guilt, and believ-"ing that if guilty the terrible ordeal through "which he and his friends had passed was a "sufficient punishment, he caused him to be "released." So young Williams "took the "first train for home, and is now with his "parents."

Now let us briefly sum up this case, presenting only the salient points. 1. The mails in the office in which this young man is a clerk are constantly robbed. 2. "An able and "indefatigable" Special Agent of the Post Office Department works up the case, and brings the clerk to trial. 3. "The chain of "evidence proves too strong for the prisoner, "and the jury find him guilty." 4. When the time for sentence comes, the prosecuting officer of the Government begins to have his doubts, and tells the convict that he may go home to his parents! And why? Because "the terrible ordeal through which the pris-"oner and his friends have passed is a suf-"ficient punishment." That is, because the young man did not like the prospect of a long imprisonment, and because his friends were very sorry for him, the District-Attorney decides to let him go scot free. Taking the case as we find it reported, we are free to say that, even in these days of judicial degeneracy, we have encountered no instance of such misplaced and mischievous sympathy as this. Outside the great and capital felonies, there is no crime greater than the young man was proved to be guilty of committing. Up to the time when he began to cry, the District-Attorney had no doubt of his guilt. The single fact that when he was present in the office letters were stolen, and that when he was absent no letters were stolen, was almost enough to convict him. An able detective investigates the case, and he has no doubt of Williams's guilt. How much heart will he have for the next investigation with which he shall be intrusted by the Government?

Let the reader just for a moment consider the loose way in which this case has been disposed of. Look at the statement of the District-Attorney's motives. He doubts the guilt of the defendant; but whether he is guilty or not, "the terrible ordeal through which he and "his friends have passed is a sufficient pun-"ishment." With all proper respect, we must say that Mr. Attorney's mind must have been in a miserably muddled mood. He pitied the lad; especially he pitied the lad's friends; he believed Williams guilty while he was trying him, and he believed him not guilty after he had convicted him; it was a very hard case, and so Williams is sent home to cheer his parents, and perhaps to renew his intimacy with the prostitute to supply whose wants he stole remittances which were anxiously looked for, and the failure of which may have occasioned not merely annoyance but distress. Is this the way to save the mails from violation? Perhaps we should add that since this Court did what is constitutionally the business of the United States, the District-Attorney has apparently authorized a statement that "he "had no doubt of the guilt of the prisoner." He was first reported as saying something very different, and we do not see that the new version of his opinion helps the case at all. On the contrary, we regard it as an aggravation.

The gentlemen of England who last year so earnestly debated the efficacy of prayer ought to read this short story, which comes from Decatur, Ill. A preacher of that place who had been blind for sixteen years, and for whom the medical men could do nothing, at last strenuously prayed for his sight, and "in one moment it was fully and permanently restored." A brother clergyman relates this tale, but strangely enough withholds the man's name, "to save the feelings of the family."

STOKES'S CASE.

THE LAST APPEAL.

ARGUMENTS AT ALBANY BY MESSRS. TREMAIN AND PHELPS—THE CASE FOR THE PRISONER AND THE CASE FOR THE PEOPLE.

ALBANY, May 26.—An argument in behalf of Edward S. Stokes on the final appeal for a new trial, before the Court of Appeals, was delivered to-day by the Hon. Lyman Tremain. Below will be found a summary of the leading points of fact and law as presented:

Judge: In closing this opening argument, allow me to epitomize the errors which are disclosed by this record, and of which this prisoner justly complains. He was protected by the mandate of the Constitution from trial unless an indictment was found against him by a grand jury selected according to law. This indictment was presented by an illegal body, a large part of which was taken from a list not authorized by law, and all of whom were illegally summoned. He interposed a special plea setting up these illegalities, and a jury was summoned to try it; and although the Presiding Judge announced that the prisoner had proved every fact set up in his plea, yet the Judge pronounced a verdict against him, and refused to allow the jury to be asked whether that was their verdict, or to go through with even the forms of the law.

At a subsequent term, the prisoner again interposed his objections to a trial upon the merits, which were overruled.

Then on his trial upon a plea entered under the direction of the court evidence was taken during the absence of the prisoner, an error which has been held fatal by this court, and during a portion of the same trial the judge himself was absent from the court. The jury acted in part upon evidence not submitted in open court, but upon their own examination of the premises where the alleged homicide was committed, and also upon their own examination of pistols out of court, and their perusal of newspapers. These were irregularities which have been repeatedly held to afford sufficient ground for a new trial.

Several of the jurors in this case had already prejudged the case, and yet, although the fact clearly appeared upon the trial of challenges such jurors were permitted to sit in the cause; and when it afterward appeared that three of them had declared before the trial their determination to hang the prisoner, all relief was still denied to him.

On the trial of the prisoner, the learned judge committed errors of the most serious character against him. The jury were instructed in the most positive terms that if the prisoner killed the deceased the law declared such killing murder, and the burden was thrown upon the prisoner of proving his innocence. A strained attempt is made to bridge over this error by reference to authorities, and yet in no criminal case has any court refused upon a writ of error to reverse a judgment when the judge has committed an error against the prisoner in his charge, and an exception was duly taken to such charge.

On the trial the prisoner had to corroborate his own evidence, that the deceased had first assaulted him with a pistol. This court has held that evidence of ill-will is competent evidence, tending to show a perpetration of an assault in connection with other proof. But the judge refused to admit evidence of ill-will and deadly threats on the part of the deceased toward the prisoner.

The reason assigned for considering this an immaterial matter by one of the learned judges of the Supreme Court is that the prisoner was not harmed by this exclusion. The only proof of threats, which was admitted, came from the prisoner and Miss Williams, the latter of whom was sought to be impeached, while the judge himself instructs the jury that the prisoner's evidence must be received with "hesitation, care and suspicion." As to the evidence of character alluded to, the judge, also, in his charge, destroys the effect even of that proof which had been given without objection, when he declared that it should only be considered so far as it proved Fisk to be a man of "personal violence."

On the trial the prosecution was allowed to give inferior evidence of the contents of written documents upon the plea that the matters sought to be proved were collateral.

On the trial, evidence showing the presence of apprehension on the part of the prisoner concerning Fisk was entirely excluded, although, in a charge of murder, every fact or circumstance tending to throw light upon the heart of the prisoner, has been uniformly adjudged to be material.

The judge admitted evidence that the prisoner had been indicted for another offense, although the prisoner had not opened the door by giving any affirmative proof as to his character.

The Constitution protects the citizen from being obliged to give evidence against himself; yet the judge admits evidence that the prisoner, in the presence of Fisk, remained silent during a conversation between a police officer and Fisk relating to the shooting, and such evidence is used to prove that the explanation given of the transaction by the prisoner under oath upon his trial was fabricated and false.

Opinions upon questions of fact, not matters of science, were received against the prisoner. Experiments proving the falsity of evidence introduced by the prosecution had been made, but the result thereof was excluded. Hearsay evidence and illegal proof tending to impeach a witness called by the defendant was admitted, and legal proof overthrowing the evidence of one of the people's witnesses was rejected.

One reason assigned by the Supreme Court for disregarding these errors was the signal impartiality exhibited by the court upon the trial, while the record proved not merely the errors to which exceptions had been interposed, but also errors in the charge, wherein it was announced that the prisoner's evidence should be discredited, in the face of the judgment of this court declaring that the fact that the witness was under an indictment was no impeachment of his evidence. The same charge alluded to the disagreement of a former jury in this case as a "misfortune" and "an act of injustice." The same charge presented a theory at war with the facts, which even the counsel for the government had not urged, and which, while it assumed that the evidence of the prisoner was false, declared such theory more in harmony with the evidence than any other that had been suggested.

It is respectfully submitted that no conviction, in a capital case, has ever been brought into this court for review so tainted with errors and illegalities as is this case.

The counsel for the prisoner was disappointed on learning that the Supreme Court had affirmed judgment in this case and felt that they could only look to you, Judges, for relief, being assured that your decision will be influenced solely by the clear cold light of precedent and law. In a civilized and Christian state, criminal justice cannot properly be administered on the theory that the end will justify the means, and we appeal to the sounder, nobler, and more humane doctrine recently enunciated by this high court, that no error upon the trial of a citizen for his life can be regarded as trivial and unimportant. All we ask is, that the prisoner's case shall once more be submitted to a jury of the country, and this we claim, not as a favor, but as a right. If, after a fair and impartial trial conducted according to law, the prisoner shall again be convicted of the atrocious crime of murder in the first degree, the community will only have suffered a little delay, while the purity and integrity with which justice is administered in the State will be upheld and maintained. If, on the other hand, the result of such trial shall prove that the prisoner was justified in what he did, or at most that his offense was an inferior grade of manslaughter, this court will have earned the grateful consideration, not merely of the prisoner, but of the whole people, by interposing its shield between Edward S. Stokes and a judicial homicide perpetrated according to the forms of law.

District-Attorney Phelps made the following points:

1. The judgment of the Court below, sustaining the demurrers interposed by the District-Attorney to the six special pleas of the prisoner, was correct.

2. The seventh special plea being negative in its form, required an affirmative replication, and the only affirmative allegation of prejudice to the prisoner, from the alleged irregularity, was distinctly negatived by the replication. There was not a particle of evidence adduced upon the trial tending to show prejudice in fact to the prisoner. The proceedings upon the trial of that plea were, in effect, a trial of the regularity of the organization of the Grand Jury by which the indictment was found. The irregularities alleged, assuming them to be all proved, could be of no avail to the prisoner.

3. The bill of exceptions, signed by Justice Cardozo, taken under the issue raised by the seventh special plea, and the order of the Court directing that the same should be made a part of the record, are not properly before this court. It is an attempt to review the proceedings upon the preliminary issue, which cannot be done.

4. The matters alleged in the seventh special plea having been correctly disposed of by the trial, before Justice Cardozo, the additional special pleas seeking to raise the same matters, was properly overruled by Mr. Justice Ingraham.

5. The exceptions taken to the ruling of the Court upon the challenges for principal cause depend upon the constitutionality of the law of 1872, chapter 375, relating to the qualifications of jurors. That question came up in the General Term of the First Department in the case of Barclay agt. The People, and the opinion of the Court delivered by Mr. Justice Ingraham, is regarded as a satisfactory answer to the objection, and is adopted as the argument on the part of the defendants in this case. There is no force in the objection that the act referred to is in violation of the Constitution in regulating the right of challenge to jurors, and providing the necessary qualifications, even if it does alter the rule of the common law on that subject. But does the law referred to make any such alteration? In regard to challenges to the favor they remain unaffected by that statute. That statute is confined to challenges for principal cause only, and in no way changes the law as to challenges to the favor.

6. There was no error in the admission of the evidence as to what occurred after the shooting, in the presence of the deceased and the prisoner. If not a part of the "res gestæ" as may be well claimed, it was certainly proper evidence to show the conduct of the prisoner when accused of the crime.

7. There was no error in admitting the minutes of the Grand Jury, proving that, on the day before the homicide, an indictment had been found against the prisoner for the offense of blackmail.

8. Neither did the Court err in admitting evidence to prove the nature and contents of the complaint made before Justice Bixby, at Yorkville, by Josephine Mansfield against Fisk; the nature and contents of the proceedings and the issue in the suit brought by Fisk against Stokes; the nature and contents of the injunction order issued in that action; the nature and contents of the affidavit used in the motion to dissolve the injunction in that action; the decision made by the Court upon denying the motion.

9. There was no error in allowing the question put to Brennan, upon his cross-examination, as to his being in the House of Refuge for stealing a watch, and how long the House of Refuge for stealing a watch, and how long the House of Refuge detained him.

10. Proof of threats, made by the deceased, that if